

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

286 Rider Ave Acquisition LLC,

Debtor.
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Case No: 21-11298-LGB

Chapter 11

**ORDER REGARDING DEVELOPMENT’S MOTION TO
CONFIRM DISPUTED PAYOFF AMOUNTS, SATISFACTION OF
DIP LOAN, AND FOR RELATED RELIEF AND SUPPLEMENT TO SAME**

WHEREAS, on November 23, 2021, the Court entered an order [ECF No. 173] (the “Final DIP Order”) authorizing the debtor and debtor in possession, 286 Rider Ave Acquisition LLC (the “Debtor”) to obtain debtor-in-possession on a final basis from the DIP Lender (as defined in the Final DIP Order); and

WHEREAS, on December 13, 2021, the Court entered an order [ECF No. 200] (the “Bid Procedures Order”) approving bid procedures and scheduling an auction for the sale of the Debtor’s real property [ECF No. 200]; and

WHEREAS, on December 29, 2021, 286 Rider Development LLC (“Development”) filed the *Motion for Entry of An Order Pursuant to Sections 105(a) and 541 of the Bankruptcy Code Confirming Disputed Payoff Amounts, Satisfaction of the DIP Loan, and for Related Relief* [ECF No. 218] (the “Payoff Motion”); and

WHEREAS, on January 4, 2022, Be-Aviv Rider LLC (the “Be-Aviv”) filed a response to the Payoff Motion [ECF No. 233]; and

WHEREAS on January 4, 2022, Debtor filed an objection to the Payoff Motion [ECF No. 234]; and

WHEREAS on January 5, 2022, Development filed a response in support of the Payoff Motion [ECF No. 238]; and

WHEREAS, on December 30, 2021, Debtor filed the *Stalking Horse Notice* [ECF No. 255] in accordance with the Bid Procedures Order; and

WHEREAS, on January 11, 2022, Development filed the *Notice of Payoff and Confirmation of Wire* [ECF No. 257]; and

WHEREAS, on January 12, 2022, the Court held a hearing on the Payoff Motion and entered an order providing for supplemental briefing and scheduling with respect to the Payoff Motion [ECF No. 259] (the “Scheduling Order”); and

WHEREAS, on January 26, 2022, pursuant to the Scheduling Order, Development filed the *Supplement to Development’s Motion to Confirm Disputed Payoff Amounts, Satisfaction of DIP Loan, and for Related Relief* [ECF No. 272] as a supplement to the Payoff Motion (the “Supplement”); and

WHEREAS, at the request of the U.S. Trustee, the Court held a conference with respect to the Payoff Motion and the Supplement on February 1, 2022; and

WHEREAS, on February 4, 2022, Rosewood Realty Group (“Rosewood”), the Debtor, the U.S. Trustee, and Be-Aviv filed objections or responses to the Supplement [ECF Nos. 282, 283, 284 & 286]; and

WHEREAS, on February 8, 2022, Development filed an omnibus response in support of the Supplement and the Payoff Motion [ECF No. 289]; and

WHEREAS, on February 10, 2022, the Court held a hearing on the Supplement and the Payoff Motion;

IT IS HEREBY ORDERED THAT:

1. Pursuant to Bankruptcy Code sections 105 and 364 and the Final DIP Order, Be-Aviv must file an accounting with the Court by February 25, 2022 at 5:00 p.m. (ET) setting forth

information about the draws made with respect to the debtor-in-possession financing authorized pursuant to the Final DIP Order which shall include (i) the date of each draw, (ii) the amount of each draw, and (iii) where the funds from each draw were paid. The accounting shall also include description of all interest paid on account of the Final DIP Loan (as defined in the Final DIP Order) and the amount of fees incurred by the DIP Lender including all legal fees and related expenses incurred for the period of November 23, 2021 through and including January 9, 2022. Be-Aviv is not required to file detailed time records with respect to such legal fees and related expenses.

2. The DIP Facility (as defined in the Final DIP Order) has been fully repaid and has terminated.

3. Be-Aviv shall file with the Court by no later than March 4, 2022 at 5:00 p.m. (ET) (i) detailed time and expense records for all requested professional fees and related expenses that Be-Aviv incurred (a) prepetition which were unpaid as of the date of the commencement of this chapter 11 case (the "Petition Date"); (b) from the Petition Date through and including November 22, 2021; and (c) from January 10, 2022 through and including February 10, 2022; and (ii) an estimate of any additional legal fees and related expenses to be incurred from February 11, 2022 through and including April 15, 2022 (collectively, the "Be-Aviv Professional Fees"). Any objections as to the reasonableness of the Be-Aviv Professional Fees must be filed with the Court by no later than March 18, 2022 at 5:00 p.m. (ET). Any reply in support of the Be-Aviv Professional Fees must be filed by no later than March 25, 2022 at 5:00 p.m. (ET). The hearing with respect to the reasonableness of the Be-Aviv Professional Fees shall be on March 29, 2022 at 10:00 a.m. (ET) and will be determined based upon the reasonableness standard under Bankruptcy Code section 506(b).

4. The deadline for parties to file claims seeking the allowance and payment of any unpaid administrative expense claims arising from the Petition Date through and including February 10, 2022 not addressed in paragraphs 3 and 5 of this order (“Administrative Expense Claims”) shall be March 4, 2022 at 5:00 p.m. (ET). Administrative Expense Claims must attach all supporting documentation and detailed records providing adequate information as to the basis for the claim. With respect to Lee E. Buchwald, Mr. Buchwald shall also provide in his Administrative Expense Claim an estimate of any additional amounts which will become due and owing to him through and including April 15, 2022. Any objections to Administrative Expense Claims must be filed with the Court by no later than March 18, 2022 at 5:00 p.m. (ET). Any reply in support of Administrative Expense Claims must be filed by no later than March 25, 2022 at 5:00 p.m. (ET). The hearing on allowance of the Administrative Expense Claims shall be on March 29, 2022 at 10:00 a.m. (ET).

5. Notwithstanding the provisions of the interim compensation order entered by the Court [ECF No. 246], Robinson Brog Leinwand Greene Genovese & Gluck P.C. (“Robinson Brog”), counsel to the Debtor, shall file by March 4, 2022 at 5:00 p.m. (ET) a final fee application (the “Robinson Brog Final Fee Application”) for any fees and related expenses incurred from the Petition Date through February 10, 2022 which shall include an estimate of any additional fees and related expenses to be incurred through and including April 15, 2022. Any objections to the Robinson Brog Final Fee Application must be filed with the Court by no later than March 18, 2022 at 5:00 p.m. (ET). Any reply in support of the Robinson Brog Final Fee Application must be filed by no later than March 25, 2022 at 5:00 p.m. (ET). The hearing on allowance of the Robinson Brog Final Fee Application shall be on March 29, 2022 at 10:00 a.m. (ET).

6. The hearing with respect to the remaining relief requested in the Payoff Motion and Supplement, specifically Development's request for dismissal of this case, shall be adjourned to April 4, 2022 at 10:00 a.m. (ET). Development shall file a further proposed form of order with respect to the dismissal request by no later than March 31, 2022 at 5:00 p.m. (ET).

7. If this Court enters an order granting the request to dismiss the case set forth in the Payoff Motion and Supplement, the amount of (i) all allowed and unpaid Administrative Expense Claims (including all known tax claims and with respect to Mr. Buchwald's claim, estimated amounts); (ii) Robinson Brog's allowed professional fees and related expenses with respect to the Robinson Brog Final Fee Application including estimated amounts; (iii) all unpaid professional fees and expenses incurred by Be-Aviv which have been allowed as reasonable including estimated amounts; (iv) any unsecured claim that has not been resolved by stipulation or withdrawn by the date of the order granting the dismissal request; and (v) any unpaid U.S. Trustee fees including estimated U.S. Trustee fees through April 15, 2022 must be fully funded into the Escrow Account (as defined in the Scheduling Order) by no later than April 8, 2022 at 3:00 p.m. (ET).

8. Notwithstanding any provisions of the Scheduling Order,

- a. the deadline for filing objections to the proposed designation of the stalking horse bidder is hereby adjourned to April 11, 2022 at 5:00 p.m. (ET). The hearing on approval of the stalking horse bidder is hereby adjourned to April 12, 2022 at 5:00 p.m. (ET). The Auction is hereby adjourned to April 13, 2022; and
- b. the hearing on confirmation of the Debtor's plan of reorganization is hereby adjourned to April 26, 2022 at 10:00 a.m. (ET).

If an order granting the dismissal request is entered and the Escrow Account is fully funded by April 8, 2022 in accordance with paragraph 7 of this order, then the deadlines in this paragraph 8 of this order shall be subject to further adjournment.

9. The hearing on the *Renewed Motion of 286 Rider Ave Development LLC, Toby Moskovits and Yechial Michael Lichtenstein to Dismiss Bankruptcy Case for Lack of Jurisdiction and Based on Debtor Admissions Pursuant to 11 U.S.C § 305 or § 1112* [ECF No. 290] shall be noticed for April 26, 2022 at 10:00 a.m. (ET). Any objections to the motion will be due seven (7) days before a hearing and any reply must be filed by no later than two (2) days prior to the hearing. The Court reserves the right to further adjourn these deadlines and the scheduled hearing date if the Escrow Account has been fully funded in accordance with paragraph 7 of this order but all funds have not been disbursed from the Escrow Account and/or all of the conditions of any order granting the dismissal of the case have not been fully satisfied by no later than April 15, 2022. Additionally, such hearing shall only take occur if (i) the request to dismiss the case set forth in the Payoff Motion and Supplement is denied, (ii) such dismissal request is granted but the Escrow Account is not fully funded by April 8, 2022 in accordance with paragraph 7 of this order, or (iii) the Court determines otherwise.

10. Counsel for the Debtor shall serve copies of this order by first class mail on all creditors listed in the Debtor's schedules, all creditors who have filed proofs of claim, the U.S. Trustee, all professionals retained by the Debtor including Rosewood and all parties who have requested notice in these cases in accordance with Bankruptcy Rule 2002 by no later than February 15, 2022.

11. This order may not be modified, or the dates herein extended, except by further order of this Court for good cause shown.

Dated: New York, New York
February 11, 2022

/s/ Lisa G. Beckerman
HON. LISA G. BECKERMAN
U.S. BANKRUPTCY JUDGE